

SENATE BILL 550
EMERGENCY BILL

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2004 Regular Session
4lr2348

By: **Senators Harris and Hollinger**

Introduced and read first time: February 6, 2004

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 2004

CHAPTER _____

1 AN ACT concerning

2 **Health - General - Nursing Referral Service Agencies - Licensing**

3 FOR the purpose of exempting certain nursing referral service agencies and certain
4 nurse registries from certain definitions; providing for the scope of this Act;
5 ~~requiring the Department of Health and Mental Hygiene to adopt certain~~
6 ~~regulations; requiring the regulations to provide for the establishment of certain~~
7 ~~agencies, the qualifications for licensure as certain agencies, the issuance of~~
8 ~~certain licenses, the renewal of certain licenses, and a procedure for the~~
9 ~~investigation of certain complaints; providing for the expiration of certain~~
10 ~~licenses under certain circumstances; authorizing the Department to issue,~~
11 ~~deny, suspend, or revoke certain licenses; requiring the Department to set~~
12 ~~certain fees; requiring certain individuals to be licensed before a nursing~~
13 ~~referral service agency to obtain a license from the Department prior to~~
14 ~~operating certain agencies; requiring certain applicants to meet certain~~
15 ~~requirements; requiring certain agencies to develop and implement certain~~
16 ~~procedures relating to the screening of certain licensed health professionals;~~
17 ~~requiring certain agencies to notify certain licensed health professionals and~~
18 ~~certain clients of certain complaint procedures; prohibiting certain agencies~~
19 ~~from maintaining certain relationships with certain licensed health~~
20 ~~professionals; exempting certain agencies from the payment of certain~~
21 ~~compensation; authorizing the Department to inspect certain agencies; institute~~
22 a certain complaint investigation process; requiring the Department to issue a
23 certain license under certain circumstances; authorizing the Department to
24 suspend or revoke a certain license under certain circumstances; prohibiting
25 certain individuals from operating certain agencies under certain
26 circumstances; providing for certain penalties for certain violations; providing
27 that the granting of a certain license does not constitute a finding of a certain
28 fact and may not give rise to a certain presumption; defining certain terms;

1 making this Act an emergency measure; and generally relating to nursing
2 referral service agencies.

3 BY repealing and reenacting, with amendments,
4 Article - Business Regulation
5 Section 9-101(d)
6 Annotated Code of Maryland
7 (1998 Replacement Volume and 2003 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article - Health - General
10 Section 19-401(c) and 19-4A-01(e)
11 Annotated Code of Maryland
12 (2000 Replacement Volume and 2003 Supplement)

13 BY adding to
14 Article - Health - General
15 Section 19-4B-01 through ~~19-4B-09~~ 19-4B-06, inclusive, to be under the new
16 subtitle "Subtitle 4B. Nursing Referral Service Agencies"
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2003 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Business Regulation**

22 9-101.

- 23 (d) (1) "Employment agency" means a person who, for a fee:
- 24 (i) obtains, offers to obtain, or attempts to obtain:
- 25 1. an employee for a person who seeks an employee; or
- 26 2. employment for a client;
- 27 (ii) provides to a client information to enable the client to obtain
28 employment;
- 29 (iii) obtains, offers to obtain, or attempts to obtain employment or
30 an engagement in connection with an entertainment, exhibition, or performance,
31 including:
- 32 1. a ballet;
- 33 2. a circus;

- 1 3. a concert;
- 2 4. the legitimate theater;
- 3 5. modeling;
- 4 6. a motion picture;
- 5 7. an opera;
- 6 8. a phonograph recording;
- 7 9. the radio;
- 8 10. a transcription;
- 9 11. television;
- 10 12. the variety field; or
- 11 13. vaudeville; or

12 (iv) 1. obtains, offers to obtain, or attempts to obtain an alien
13 labor certification or immigrant visa for an individual; and

14 2. participates directly or indirectly in the recruitment or
15 supply of an individual who resides outside of the continental United States for
16 employment in the continental United States.

17 (2) "Employment agency" does not include a person who merely:

18 (i) conducts a business that directly employs individuals to provide
19 part-time or temporary services to another person;

20 (ii) as a lawyer, directly obtains an immigrant visa for an
21 individual; [or]

22 (iii) conducts a business that:

23 1. receives a fee that is paid wholly by an employer;

24 2. does not collect money from an individual seeking
25 employment; and

26 3. does not require an individual seeking employment to
27 make a contract; OR

28 (IV) OPERATES A NURSING REFERRAL SERVICE AGENCY THAT IS
29 LICENSED UNDER TITLE 19, SUBTITLE 4B OF THE HEALTH - GENERAL ARTICLE.

Article - Health - General

19-401.

(c) (1) "Home health care" means any of the following services that are provided under the general direction of a licensed health professional practicing within the scope of their practice act:

- (i) Audiology and speech pathology;
- (ii) Dietary and nutritional services;
- (iii) Drug services;
- (iv) Home health aid;
- (v) Laboratory;
- (vi) Medical social services;
- (vii) Nursing;
- (viii) Occupational therapy;
- (ix) Physical therapy; OR
- (x) Provision of medically necessary sickroom equipment and supplies; or
- (xi) A nurse registry that is an employment agency under the provisions of the Maryland Employment Agency Act].

(2) However, the provisions of this subsection do not apply to:

(I) A NURSING REFERRAL SERVICE AGENCY THAT IS LICENSED AS A NURSING REFERRAL SERVICE AGENCY UNDER THE PROVISIONS OF SUBTITLE 4B OF THIS TITLE; OR

(II) [a] A home-based hospice care program that is licensed as a home-based hospice care program under the provisions of Subtitle 9 of this title.

(3) A home health agency shall also be licensed as a hospice care program if the home health agency operates a hospice care program that is distinct from its other services.

19-4A-01.

(e) (1) "Residential service agency" means any person that is engaged in a nongovernmental business of employing or contracting with individuals to provide home health care for compensation to an unrelated sick or disabled individual in the residence of that individual.

1 (2) "Residential service agency" includes[:

2 (i) Any] ANY agency that employs or contracts with individuals
3 directly for hire as home health care providers[; or

4 (ii) A nurse registry that is an employment agency under the
5 provisions of the Maryland Employment Agency Act that:

6 1. Screens or refers individuals for a client's selection or
7 rejection, as its sole business operation; and

8 2. Does not itself provide any home health care service].

9 (3) "Residential service agency" does not include:

10 (i) A home health agency that is licensed under the provisions of
11 Subtitle 4 of this title;

12 (ii) A person required to be licensed as a home health agency under
13 the provisions of Subtitle 4 of this title;

14 (iii) A home-based hospice care program that is licensed under the
15 provisions of Subtitle 9 of this title;

16 (iv) A hospital that is licensed under the provisions of Subtitle 3 of
17 this title;

18 (v) A related institution that is licensed under the provisions of
19 Subtitle 3 of this title;

20 (vi) Personal care providers under the Medical Assistance Personal
21 Care Program;

22 (vii) Any person practicing a health occupation that the person is
23 authorized to practice under the Health Occupations Article;

24 (VIII) A NURSING REFERRAL SERVICE AGENCY THAT IS LICENSED
25 UNDER SUBTITLE 4B OF THIS TITLE;

26 [(viii)] (IX) A group of persons licensed under the same title of the
27 Health Occupations Article practicing as a business; or

28 [(ix)] (X) Residential rehabilitation services providers approved
29 under regulations adopted by the State Mental Health Authority.

30 SUBTITLE 4B. NURSING REFERRAL SERVICE AGENCIES.

31 19-4B-01.

32 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
33 INDICATED.

1 (B) "CARE PROVIDER" MEANS AN INDIVIDUAL WHO PROVIDES HEALTH CARE
 2 SERVICES AND ASSISTANCE TO A CLIENT IN THE ACTIVITIES OF DAILY LIVING,
 3 INCLUDING:

4 (1) BATHING, TOILETING, AND PERSONAL HYGIENE;

5 (2) DRESSING;

6 (3) MEAL PREPARATION AND EATING;

7 (4) COMPANIONSHIP; AND

8 (5) ASSISTANCE IN PHYSICAL TRANSFER AND AMBULATION.

9 (C) "HOME HEALTH AID SERVICES" MEANS PERSONAL AND HEALTH CARE
 10 SERVICES DELIVERED TO A CLIENT BY A CARE PROVIDER.

11 ~~(B)~~ (D) "LICENSE" MEANS A NURSING REFERRAL SERVICE AGENCY LICENSE.

12 ~~(C)~~ (E) "LICENSED HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS
 13 LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE
 14 HEALTH CARE SERVICES.

15 ~~(D)~~ (F) "NURSING REFERRAL SERVICE AGENCY" MEANS ONE OR MORE
 16 INDIVIDUALS ENGAGED IN THE BUSINESS OF SCREENING AND REFERRING,
 17 DIRECTLY OR IN ACCORDANCE WITH CONTRACTUAL ARRANGEMENTS THAT MAY
 18 INCLUDE INDEPENDENT CONTRACTORS, LICENSED HEALTH PROFESSIONALS OR
 19 CARE PROVIDERS TO CLIENTS FOR THE PROVISION OF SKILLED OR CERTIFIED
 20 NURSING SERVICES, HOME HEALTH AID SERVICES, OR OTHER HOME HEALTH CARE
 21 SERVICES IN THE RESIDENCE OF THE CLIENT AT THE REQUEST OF THE CLIENT.

22 19-4B-02.

23 THIS SUBTITLE DOES NOT LIMIT THE RIGHT OF ANY PERSON WHO HOLDS A
 24 LICENSE UNDER THIS ARTICLE TO ACT AS AUTHORIZED BY THAT LICENSE.

25 19-4B-03.

26 ~~(A) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT SET STANDARDS~~
 27 ~~FOR THE CARE, TREATMENT, HEALTH, SAFETY, WELFARE, AND COMFORT OF~~
 28 ~~INDIVIDUALS WHO RECEIVE SERVICES THROUGH A NURSING REFERRAL SERVICE~~
 29 ~~AGENCY.~~

30 ~~(B) THE REGULATIONS SHALL PROVIDE FOR:~~

31 ~~(1) THE ESTABLISHMENT OF NURSING REFERRAL SERVICE AGENCIES;~~

32 ~~(2) THE QUALIFICATIONS FOR LICENSURE AS A NURSING REFERRAL~~
 33 ~~SERVICE AGENCY;~~

1 (3) ~~THE ISSUANCE OF LICENSES TO NURSING REFERRAL SERVICE~~
2 ~~AGENCIES;~~

3 (4) ~~IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, THE~~
4 ~~RENEWAL OF LICENSES FOR NURSING REFERRAL SERVICE AGENCIES; AND~~

5 (5) ~~A PROCEDURE FOR THE INVESTIGATION OF COMPLAINTS~~
6 ~~REGARDING NURSING REFERRAL SERVICE AGENCIES OR THE LICENSED HEALTH~~
7 ~~PROFESSIONALS SCREENED AND REFERRED BY NURSING REFERRAL SERVICE~~
8 ~~AGENCIES.~~

9 (C) (1) ~~A LICENSE EXPIRES ON THE THIRD ANNIVERSARY OF ITS EFFECTIVE~~
10 ~~DATE UNLESS:~~

11 (I) ~~THE DEPARTMENT SUSPENDS OR REVOKES THE LICENSE; OR~~

12 (II) ~~THE LICENSE IS RENEWED FOR A 3-YEAR TERM AS PROVIDED~~
13 ~~IN THIS SECTION.~~

14 (2) ~~BEFORE A LICENSE EXPIRES, A LICENSE MAY BE RENEWED FOR AN~~
15 ~~ADDITIONAL 3-YEAR TERM IF THE APPLICANT:~~

16 (I) ~~OTHERWISE IS ENTITLED TO A LICENSE;~~

17 (II) ~~PAYS TO THE SECRETARY THE RENEWAL FEE SET BY~~
18 ~~REGULATION; AND~~

19 (III) ~~SUBMITS TO THE SECRETARY A RENEWAL APPLICATION ON~~
20 ~~THE FORM THAT THE SECRETARY REQUIRES.~~

21 (D) ~~THE DEPARTMENT MAY ISSUE, DENY, SUSPEND, OR REVOKE A NURSING~~
22 ~~REFERRAL SERVICE AGENCY LICENSE IN ACCORDANCE WITH THE REGULATIONS~~
23 ~~ADOPTED UNDER THIS SUBTITLE.~~

24 (E) ~~THE DEPARTMENT SHALL SET REASONABLE FEES FOR THE ISSUANCE~~
25 ~~AND RENEWAL OF LICENSES OR OTHER SERVICES PROVIDED BY THE DEPARTMENT~~
26 ~~NOT TO EXCEED THE ADMINISTRATIVE COSTS OF THE LICENSURE OF NURSING~~
27 ~~REFERRAL SERVICE AGENCIES UNDER THIS SUBTITLE.~~

28 ~~19-4B-04.~~

29 ~~AN INDIVIDUAL SHALL BE LICENSED BY THE DEPARTMENT BEFORE~~
30 ~~OPERATING A NURSING REFERRAL SERVICE AGENCY.~~

31 ~~19-4B-05.~~

32 ~~TO QUALIFY FOR A LICENSE, AN APPLICANT:~~

33 (1) ~~SHALL PROVE THAT THE NURSING REFERRAL SERVICE AGENCY~~
34 ~~WILL PROVIDE APPROPRIATE SCREENING AND REFERRAL SERVICES;~~

1 (2) SHALL MEET ANY ADDITIONAL REQUIREMENTS THAT THE
2 DEPARTMENT ADOPTS; AND

3 (3) MAY NOT BE REQUIRED TO MEET THE REQUIREMENTS OF SUBTITLE
4 1 OF THIS TITLE FOR CERTIFICATE OF NEED.

5 ~~19-4B-06.~~

6 (A) A NURSING REFERRAL SERVICE AGENCY SHALL DEVELOP AND
7 IMPLEMENT A PROCEDURE TO SCREEN LICENSED HEALTH PROFESSIONALS THAT
8 INCLUDES AN INTERVIEW OF THE LICENSED HEALTH PROFESSIONAL AND
9 VERIFICATION OF THE LICENSED HEALTH PROFESSIONAL'S:

10 (1) CRIMINAL BACKGROUND CHECK;

11 (2) CURRENT LICENSURE OR CERTIFICATION UNDER THE HEALTH
12 OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE SERVICES;

13 (3) BASIC HEALTH STATUS;

14 (4) REFERENCES;

15 (5) EMPLOYMENT HISTORY; AND

16 (6) COMPLETION OF FEDERAL I 9 FORMS.

17 (B) A NURSING REFERRAL SERVICE AGENCY SHALL NOTIFY LICENSED
18 HEALTH PROFESSIONALS AND CLIENTS OF THE APPROPRIATE COMPLAINT PROCESS
19 AND THE DEPARTMENT'S COMPLAINT HOTLINE.

20 (C) A NURSING REFERRAL SERVICE AGENCY MAY NOT MAINTAIN AN
21 EMPLOYMENT RELATIONSHIP WITH THE LICENSED HEALTH PROFESSIONALS THAT
22 IT SCREENS AND REFERS TO CLIENTS.

23 (D) A NURSING REFERRAL SERVICE AGENCY IS NOT RESPONSIBLE FOR
24 PAYING COMPENSATION FOR THE SERVICES RENDERED BY A LICENSED HEALTH
25 PROFESSIONAL THAT IT SCREENS AND REFERS TO CLIENTS.

26 ~~19-4B-07.~~

27 THE DEPARTMENT MAY INSPECT A NURSING REFERRAL SERVICE AGENCY TO
28 DETERMINE WHETHER THE NURSING REFERRAL SERVICE AGENCY IS MEETING THE
29 REQUIREMENTS OF THIS SUBTITLE.

30 ~~19-4B-08.~~

31 (A) AN INDIVIDUAL MAY NOT OPERATE, ATTEMPT TO OPERATE, OR HOLD
32 ONE'S SELF OUT AS OPERATING A NURSING REFERRAL SERVICE AGENCY UNLESS
33 THE INDIVIDUAL IS LICENSED UNDER THIS SUBTITLE.

~~1 (B) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS GUILTY OF A
2 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000
3 FOR THE FIRST OFFENSE AND NOT EXCEEDING \$10,000 FOR EACH SUBSEQUENT
4 OFFENSE.~~

~~5 19-4B-09.~~

~~6 (A) AN INDIVIDUAL WHO OPERATES A NURSING REFERRAL SERVICE AGENCY
7 IN VIOLATION OF THE REGULATIONS ADOPTED UNDER THIS SUBTITLE IS GUILTY OF
8 A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
9 \$1,000.~~

~~10 (B) EACH DAY A VIOLATION IS CONTINUED AFTER THE FIRST CONVICTION IS
11 A SEPARATE OFFENSE.~~

12 (A) (1) A NURSING REFERRAL SERVICE AGENCY MAY RECEIVE A FEE OR
13 OTHER COMPENSATION FOR PROVIDING ITS SERVICES.

14 (2) A CONTRACTUAL ARRANGEMENT MAY PROVIDE THAT A NURSING
15 REFERRAL SERVICE AGENCY IS NOT RESPONSIBLE FOR PAYING ANY PART OF THE
16 COMPENSATION TO THE LICENSED HEALTH CARE PROFESSIONALS OR CARE
17 PROVIDERS THAT THE NURSING REFERRAL SERVICE AGENCY SCREENS OR REFERS
18 TO CLIENTS.

19 (3) A NURSING REFERRAL SERVICE AGENCY MAY PROVIDE
20 ADMINISTRATIVE ASSISTANCE.

21 (B) A NURSING REFERRAL SERVICE AGENCY SHALL:

22 (1) OBTAIN A LICENSE FROM THE DEPARTMENT PRIOR TO OPERATING
23 AS A NURSING REFERRAL SERVICE AGENCY;

24 (2) DEVELOP AND IMPLEMENT A PROCEDURE TO SCREEN LICENSED
25 HEALTH PROFESSIONALS AND CARE PROVIDERS THAT INCLUDES THE FOLLOWING:

26 (I) A STATE CRIMINAL HISTORY RECORDS CHECK;

27 (II) VERIFICATION OF CURRENT LICENSURE OR CERTIFICATION
28 UNDER THE HEALTH OCCUPATIONS ARTICLE;

29 (III) A BASIC HEALTH SCREENING, INCLUDING A TUBERCULOSIS
30 SCREENING;

31 (IV) VERIFICATION OF REFERENCES;

32 (V) VERIFICATION OF EMPLOYMENT HISTORY;

33 (VI) COMPLETION OF 1-9 FORMS; AND

1 (VII) AN IN-PERSON INTERVIEW OF A LICENSED HEALTH
2 PROFESSIONAL AND CARE PROVIDER BEFORE ANY REFERRAL OF THE INDIVIDUAL IS
3 MADE TO A CLIENT;

4 (3) INSTITUTE AN INTERNAL CLIENT COMPLAINT INVESTIGATION
5 PROCESS THAT INCLUDES:

6 (I) NOTICE TO THE CLIENT OR CLIENT'S REPRESENTATIVE OF THE
7 COMPLAINT PROCESS; AND

8 (II) PROTOCOLS TO INVESTIGATE COMPLAINTS;

9 (4) PROVIDE NOTICE TO CLIENTS OF THE DEPARTMENT'S COMPLAINT
10 HOTLINE NUMBER FOR COMPLAINTS ABOUT THE SERVICES PROVIDED BY AN
11 INDIVIDUAL REFERRED BY THE NURSING REFERRAL SERVICE AGENCY; AND

12 (5) ALLOW CLIENTS TO ACCEPT OR REJECT, AT THEIR DISCRETION, ANY
13 LICENSED HEALTH PROFESSIONAL OR CARE PROVIDER REFERRED BY THE NURSING
14 REFERRAL SERVICE AGENCY.

15 19-4B-04.

16 (A) THE DEPARTMENT SHALL ISSUE A 3-YEAR LICENSE TO A NURSING
17 REFERRAL SERVICE AGENCY AFTER THE NURSING REFERRAL SERVICE AGENCY:

18 (1) COMPLETES AN APPLICATION FOR LICENSURE; AND

19 (2) PAYS A LICENSING FEE OF \$1,000 TO THE DEPARTMENT.

20 (B) A LICENSE SHALL EXPIRE ON THE THIRD ANNIVERSARY OF ITS
21 EFFECTIVE DATE UNLESS:

22 (1) THE DEPARTMENT SUSPENDS OR REVOKES THE LICENSE; OR

23 (2) THE LICENSE IS RENEWED.

24 (C) THE DEPARTMENT MAY SUSPEND OR REVOKE A LICENSE ISSUED UNDER
25 THIS SECTION IF THE NURSING REFERRAL SERVICE AGENCY IS OPERATING IN
26 VIOLATION OF THE REQUIREMENTS OF THIS SUBTITLE.

27 19-4B-05.

28 (A) AN INDIVIDUAL MAY NOT OPERATE OR ENGAGE IN, OR ATTEMPT TO
29 OPERATE OR ENGAGE IN, OR HOLD ONE'S SELF OUT AS OPERATING OR ENGAGING IN
30 THE BUSINESS OF A NURSING REFERRAL SERVICE AGENCY UNLESS THE INDIVIDUAL
31 IS LICENSED UNDER THIS SUBTITLE.

32 (B) (1) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS GUILTY OF A
33 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000
34 FOR THE FIRST OFFENSE AND NOT EXCEEDING \$10,000 FOR ANY SUBSEQUENT
35 OFFENSE.

1 (2) EACH DAY A VIOLATION IS CONTINUED AFTER THE FIRST
2 CONVICTION IS A SEPARATE OFFENSE.

3 19-4B-06.

4 FOR PURPOSES OF ANY OTHER PART OF THE CODE, THE GRANTING OF A
5 LICENSE UNDER THIS SUBTITLE DOES NOT CONSTITUTE A FINDING OF ANY FACT
6 BASED ON WHICH THE LICENSE WAS GRANTED, AND MAY NOT GIVE RISE TO ANY
7 PRESUMPTION REGARDING THE EXISTENCE OF ANY FACT BASED ON WHICH THE
8 LICENSE WAS GRANTED.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
10 measure, is necessary for the immediate preservation of the public health or safety,
11 has been passed by a ye and nay vote supported by three-fifths of all the members
12 elected to each of the two Houses of the General Assembly, and shall take effect from
13 the date it is enacted.